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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

ORIGINAL

In the matter of )  
)  
Implementation of Section 17 )  
of the Cable Television )  
Consumer Protection and )  
Competition Act of 1993 )  
)  
Compatibility Between )  
Cable System and Consumer )  
Electronics Equipment )

ET Docket No. 93-7

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**JOINT PETITION FOR FURTHER RECONSIDERATION**

Pursuant to Section 1.429 of the Commission's rules, 47 C.F.R. § 1.429, the undersigned entities respectfully petition for reconsideration by the Commission of the April 10, 1996 *Reconsideration Order*<sup>1</sup> in this docket.

INTRODUCTION

The parties joining in this petition<sup>2</sup>—ranging from home automation and computer software companies to equipment manufacturers and electric utilities—share a common belief that the revised model for FCC standards-setting created by the landmark Telecommunications Act of 1996<sup>3</sup> must be applied to the Commission's decisions on cable equipment compatibility. Section 301(f) of the 1996 Act specifically

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<sup>1</sup> *Implementation of Section 17 of the Cable Television Consumer Protection and Competition Act of 1992—Compatibility between Cable Systems and Consumer Electronics Equipment*, ET Docket No. 93-7, Memorandum Opinion & Order, FCC 96-129 (released April 10, 1996), 61 Fed. Reg. 18,508 (April 26, 1996) (“*Reconsideration Order*”).

<sup>2</sup> The parties to this petition are: Apple Computer, Inc., Detroit Edison Company, Echelon Corporation, Global Village Communication, Inc., Kleiner Perkins Caulfield & Byers, Novell, Inc., Stratacom, Inc., and Sun Microsystems, Inc.

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addresses the Commission's authority to promulgate standards for cable equipment compatibility, yet the *Reconsideration Order* does not mention the Act's passage or its new requirements on cable compatibility. In the light of the 1996 Act, therefore, we urge that the Commission reconsider its April 10 Order, reevaluate the appropriateness of the so-called "Decoder Interface" as a standard for cable compatibility, and seek comment from all potentially affected industries, in addition to the cable television and consumer electronic industries, on how to meet the narrower charter for Commission cable equipment compatibility standards established by Section 301(f).

### DISCUSSION

The Commission was tasked to "ensure" compatibility between TVs, VCRs and cable "set-top box" converters under Section 624A of the Communications Act, added by the 1992 Cable Act.<sup>4</sup> Proposed by the joint EIA/NCTA "Cable-Consumer Electronics Compatibility Advisory Group" ("C3AG"), the concept of a "Decoder Interface" standard for cable equipment compatibility has now been under consideration by the FCC for nearly four years. In its 1993 NPRM in this proceeding, the Commission made clear that it intended to adopt the Decoder Interface "if the new standard is available in sufficient time for us to obtain comment on it before we complete our decision in this matter."<sup>5</sup>

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<sup>3</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996)(to be codified at 47 U.S.C. § 151 et. seq.)(*"1996 Act"*).

<sup>4</sup> Cable Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460, § 17 (1992) (codified at 47 U.S.C. § 544a).

<sup>5</sup> *Implementation of Section 17 of the Cable Television Consumer Protection and Competition Act of 1992—Compatibility Between Cable Systems and Consumer Electronic Equipment*, Notice of Proposed Rulemaking, 8 FCC Rcd. 8495, 8499 (1993).

The Commission has not issued a final decision on the Decoder Interface or in ET Docket No. 93-7, at least in part because progress of the EIA/NCTA Joint Engineering Committee ("JEC") developing the proposed standard has been slow. Although the C3AG submitted a draft standard to the Commission in August 1994,<sup>6</sup> significant disputes subsequently emerged between the cable and consumer electronics industries over the scope of the standard,<sup>7</sup> and no supplemental or final proposal has been filed by the C3AG. The Commission has not sought public comment on the C3AG proposal.

The passage of the 1996 Act substantially changes the scope of the Commission's responsibility, and authority, with respect to cable equipment compatibility. Section 301(f) of the Act, the so-called "Eshoo Provision," requires that the Commission achieve compatibility with "narrow technical standards" that "maximize competition" for functions other than descrambling of cable programming and that "do not affect" features, functions or protocols in unrelated markets such as computer network services and home automation communications.<sup>8</sup> These limitations raise serious questions

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<sup>6</sup> Cable-Consumer Electronics Advisory Group Proposal for the Decoder Interface Standard, ET Docket No. 93-7 (filed Aug. 15, 1994) ("C3AG Proposal"); see Letter from Jeffrey A. Campbell to William F. Caton, Aug. 15, 1994 (forwarding C3AG Proposal); Proposal of the Consumer Electronics Group of the Electronics Industries Association for a Decoder Interface Standard, ET Docket No. 93-7 (filed Aug. 15, 1994). The C3AG committed to "report to the FCC on the status" of its standards activities by December 31, 1994. C3AG Proposal, at 1. No such report was filed.

<sup>7</sup> Compare Statement of the Consumer Electronics Group of the Electronics Industries Association Regarding the Decoder Interface, ET Docket No. 93-7 (filed Feb. 3, 1995), with Letter from Daniel L. Brenner and Wendell H. Bailey, NCTA, to Richard M. Smith, FCC, Feb. 13, 1995. CEMA (EIA/CEG) insisted in response that "at present there is no complete proposal for a Decoder Interface pending before the Commission. NCTA would have the Commission seek comment solely on the incomplete, draft IS-105 standard originally submitted by the C3AG. . . . The incomplete, draft IS-105 no longer has the support of the C3AG." Letter from Joseph P. Markoski to Richard M. Smith, FCC, March 9, 1995.

<sup>8</sup> Section 301(f) of the Act limits the Commission's cable equipment compatibility authority by requiring the Commission (1) to achieve compatibility with "narrow technical standards," (2) to "maximize competition" for all "features, functions [and] protocols" of set-top boxes, and (3) to craft compatibility rules that "do not affect . . . telecommunications interface equipment, home automation (Footnote continued on next page)

whether the Decoder Interface, as proposed by C3AG and as currently being developed by the JEC, could lawfully be adopted by the Commission.

Furthermore, Congress directed that the FCC “promptly complete” this proceeding, but “not at the risk that premature or overbroad Government standards may interfere in the market driven process of standardization in technology intensive markets.”<sup>9</sup> The parties to this petition, representing a cross-section of many different communications-related industries, agree on the common principle that voluntary, private industry standards are preferable to government standards, particularly in technologically robust markets. This procompetitive philosophy, which permeates the 1996 Act’s other provisions on interoperability and standards—for instance Section 256 on network interconnectivity and Section 304 on commercial availability of “navigation devices”—is the policy underlying the Eshoo Provision. Section 301(f) constrains the Commission’s authority to promulgate broad technical standards, in favor of marketplace competition, technological innovation and consumer choice.

Unfortunately, the April 10 *Reconsideration Order* does not examine whether the Commission’s tentative decision to adopt the Decoder Interface can survive passage of the Eshoo Provision. To the contrary, the *Reconsideration Order* reads as if the 1996 Act had not been passed, and incorrectly implies that the Commission has *already* adopted the Decoder Interface. Because there has never been an opportunity for public comment on the C3AG’s proposed Decoder Interface standard, and because that

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communications, and computer network services.” The complete text of Section 624A of the Act, as amended by Section 301(f) of the 1996 Act, is attached to this petition as Exhibit A.

<sup>9</sup> *Joint Explanatory Statement of the Committee on Conference*, H. Rep. No. 104-458, 104th Cong., 2d Sess. 170-71 (1996).

proposal is inconsistent in many ways with Section 301(f) of the 1996 Act, the Commission is best served by reconsidering the April 10 Order and soliciting public comment on the status and legality of the Decoder Interface.

Reconsideration of the April 10 Order is especially important in light of the substantial passage of time since the Commission first considered the Decoder Interface, which has produced several years of *ex parte* filings in this docket. The resulting uncertainty is compounded by ambiguity in the *Reconsideration Order* on the status of the Decoder Interface. Notwithstanding the Commission's 1993 commitment to seek comment on the Decoder Interface before adoption, and the *Reconsideration Order's* recognition that the Commission has "defer[ed] adoption of a Decoder Interface standard pending completion and submission of an acceptable standard by the JEC," *Order* ¶ 30, the *Reconsideration Order* nonetheless "require[s] that the Decoder Interface be designed to enable all functions other than security control to be provided in competitively supplied equipment." *Id.* ¶ 38. This appears to suggest that the Commission has already adopted a Decoder Interface, despite having made no "final decision" on the standard.<sup>10</sup>

In any event, the 1996 Act necessitates a fundamental re-examination of the Commission's assumptions and decisions in this proceeding. First, the Eshoo Provision requires that the Commission consider, as its first priority in securing cable

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<sup>10</sup> *Reconsideration Order* ¶ 38 n.25. The May 1994 *First Report and Order* in this docket contemplated a 90-day turn around on rules for the Decoder Interface. *Implementation of Section 17 of the Cable Television Consumer Protection and Competition Act of 1992—Compatibility Between Cable Systems and Consumer Electronic Equipment*, First Report and Order, 9 FCC Rcd 1981 ¶ 3 (1994). Thereafter, if no "industry" standard was submitted, the Commission pledged to "develop rules establishing a standard for a Decoder Interface connector and requirements for its use." *Id.*

compatibility, “the need to maximize open competition for all features, functions, protocols, and other product and service options” unrelated to descrambling. This raises a serious question whether a Commission standard may reach beyond functions other than conditional access to specify a uniform means of interconnecting non-security modules to TVs and VCRs. Second, the Eshoo Provision adds a Congressional finding that cable compatibility can be achieved with “narrow technical standards” that mandate a “minimum degree” of standardization, and commands the Commission not to “affect” home automation, computer network, or telecommunications equipment products.<sup>11</sup> The Decoder Interface, as presently envisioned, cannot meet this standard.

As Rep. Eshoo stated during the debate on the Act:

[T]he agency has taken our 1992 Cable Act—the source of the Commission’s power to assure compatibility between televisions, VCR’s, and cable systems—and gone far beyond what appropriate public policy requires or its statutory authority permits. The Commission’s 1994 proposal for a decoder interface would make the television set the gateway to the burgeoning information superhighway, relegating the computer, and all other home appliances, to second-tier status. It also would include one specific home automation protocol—called CEBus, or Consumer Electronic BUS—as the mechanism by which all cable-ready TV’s and set-top boxes would communicate. My amendment prevents these consequences.

142 Cong. Rec. H1160 (daily ed. Feb. 1, 1996).<sup>12</sup>

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<sup>11</sup> As the House Report states, Section 301(f) “directs the Commission to set only minimal standards to assure compatibility” and “ensure[s] that Commission efforts with respect to cable compatibility do not affect unrelated markets, such as computers or home automation, or result in a preference for one home automation protocol over another.” H. Rep. No. 104-204, 104th Cong., 1st Sess. 111 (1995). Section 301(f) is included in the final Act unchanged from the text passed by the House of Representatives.

<sup>12</sup> Section 301(f) “prevents these consequences by precluding the Commission from standardizing any features or protocols not necessary for descrambling, preventing the selection of CEBus or any other home automation protocol as part of the FCC’s cable compatibility regulations, and precluding the  
(Footnote continued on next page)

Indeed, there was wide agreement in Congress that Section 301(f) was required in order to scale back the Commission's role in achieving cable compatibility under the 1992 Cable Act. Senator Ford emphasized that "the FCC has gone beyond the directions contained in that 1992 law," and that "Section 301(f) leaves these standards to be set, as they should be, by competition in the marketplace." 142 Cong. Rec. S704-705 (daily ed. Feb. 1, 1996). Senator Burns also pointed out that the Eshoo Provision leaves "the development of [standards for] analog cable equipment to the private sector" in order to avoid "freezing or chilling" the market. 142 Cong. Rec. S700 (daily ed. Feb. 1, 1996). Senator Feinstein agreed that Section 301(f) was a means of "prohibiting the FCC from developing overbroad regulations that could impede progress in the computer industry." *Id.* at S715.

In this context, there can be little question that the Commission would be best served by reevaluating its position on the Decoder Interface and seeking comment from a broader cross-section of American industry, not limited to the cable television and consumer electronics participants in the C3AG and JEC.

The decoder interface, with its artificial bottleneck for the television and its unnecessary impact on home automation, is far from the only approach for solving those limited problems. *The Commission must rework its compatibility proposal.* It should also seek input from the computer, home automation, video dial tone and other potentially affected industries, *not just the cable television and consumer electronics industries.*

142 Cong. Rec. H1161 (daily ed. Feb. 1, 1996)(remarks of Rep. Eshoo)(emphasis supplied). This is vitally important now, because the Commission has neither allowed

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Commission from affecting products in the computer or home automation marketplaces in any way." 142 Cong. Rec. H1161 (daily ed. Feb. 1, 1996)(remarks of Rep. Eshoo).

interested parties an opportunity to comment formally on the C3AG Decoder Interface proposal nor fulfilled its commitment to solicit public comment on the Decoder Interface standard before adopting cable compatibility rules. Even if the Eshoo Provision did not require the Commission to seek input from parties and industries that are not included in the JEC and C3AG, therefore, it is good public policy to do so at this time in light of the new environment created by the 1996 Act.

### CONCLUSION

Due to the significant changes imposed on Commission standards-setting in the 1996 Act, the undersigned entities jointly request that the Commission reconsider and clarify its position on the Decoder Interface, as set forth in the *Reconsideration Order*, and promptly issue a Public Notice in this docket soliciting comment from all potentially affected industries on the appropriate means of achieving Congress' new mandate for "narrow technical standards" on cable equipment compatibility.

Respectfully submitted,

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DETROIT EDISON COMPANY  
ECHELON CORPORATION  
GLOBAL VILLAGE COMMUNICATION, INC.  
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Dated: May 28, 1996



**EXHIBIT A**

**Section 624A of the Communications Act of 1934  
(47 USCS § 544a)**

AS RESTATED BY INCLUSION OF SECTION 301(F) OF THE TELECOMMUNICATIONS ACT OF 1996

(New language underscored)

§ 544a. Consumer electronics equipment compatibility

(a) Findings. The Congress finds that--

(1) new and recent models of television receivers and video cassette recorders often contain premium features and functions that are disabled or inhibited because of cable scrambling, encoding, or encryption technologies and devices, including converter boxes and remote control devices required by cable operators to receive programming;

(2) if these problems are allowed to persist, consumers will be less likely to purchase, and electronics equipment manufacturers will be less likely to develop, manufacture, or offer for sale, television receivers and video cassette recorders with new and innovative features and functions;

(3) cable operators should use technologies that will prevent signal thefts while permitting consumers to benefit from such features and functions in such receivers and recorders; and

(4) compatibility among televisions, video cassette recorders and cable systems can be assured with narrow technical standards that mandate a minimum degree of common design and operation, leaving all features, functions, protocols and other product and service options for selection through open competition in the market.

(b) Compatible interfaces.

(1) Report; regulations. Within 1 year after the date of enactment of this section [Oct. 5, 1992], the Commission, in consultation with representatives of the cable industry and the consumer electronics industry, shall report to Congress on means of assuring compatibility between televisions and video cassette recorders and cable systems, consistent with the need to prevent theft of cable service, so that cable subscribers will be able to enjoy the full benefit of both the programming available on cable systems and the functions available on their televisions and video cassette recorders. Within 180 days after the date of submission of the report required by this subsection, the Commission shall issue such regulations as are necessary to assure such compatibility.

(2) Scrambling and encryption. In issuing the regulations referred to in paragraph (1), the Commission shall determine whether and, if so, under what circumstances to permit cable systems to scramble or encrypt signals or to restrict cable systems in the manner in which they encrypt or scramble signals, except that the Commission shall not limit the use of scrambling or encryption technology where the use of such technology does not interfere with the functions of subscribers' television receivers or video cassette recorders.

(c) Rulemaking requirements.

(1) Factors to be considered. In prescribing the regulations required by this section, the Commission shall consider--

(A) the need to maximize open competition in the market for all features, functions, protocols and other product and service options of converter boxes and other cable converters unrelated to the descrambling or decryption of cable television signals;

(B) the costs and benefits to consumers of imposing compatibility requirements on cable operators and television manufacturers in a manner that, while providing effective protection against theft or unauthorized reception of cable service, will minimize interference with or nullification of the special functions of subscribers' television receivers or video cassette recorders, including functions that permit the subscriber--

(i) to watch a program on one channel while simultaneously using a video cassette recorder to tape a program on another channel;

(ii) to use a video cassette recorder to tape two consecutive programs that appear on different channels; and

(iii) to use advanced television picture generation and display features; and

(C) the need for cable operators to protect the integrity of the signals transmitted by the cable operator against theft or to protect such signals against unauthorized reception.

(2) Regulations required. The regulations prescribed by the Commission under this section shall include such regulations as are necessary--

(A) to specify the technical requirements with which a television receiver or video cassette recorder must comply in order to be sold as "cable compatible" or "cable ready";

(B) to require cable operators offering channels whose reception requires a converter box--

(i) to notify subscribers that they may be unable to benefit from the special functions of their television receivers and video cassette recorders, including functions that permit subscribers--

(I) to watch a program on one channel while simultaneously using a video cassette recorder to tape a program on another channel;

(II) to use a video cassette recorder to tape two consecutive programs that appear on different channels; and

(III) to use advanced television picture generation and display features; and

(ii) to the extent technically and economically feasible, to offer subscribers the option of having all other channels delivered directly to the subscribers' television receivers or video cassette recorders without passing through the converter box;

(C) to promote the commercial availability, from cable operators and retail vendors that are not affiliated with cable systems, of converter boxes and of remote control devices compatible with converter boxes;

(D) to ensure that any standards or regulations developed under the authority of this section to ensure compatibility between television, video cassette recorders, and cable systems do not affect features, functions, protocols and other product and service options other than those specified in paragraph (1)(B), including telecommunications interface equipment, home automation communications, and computer network services;

(E) to require a cable operator who offers subscribers the option of renting a remote control unit--

(i) to notify subscribers that they may purchase a commercially available remote control device from any source that sells such devices rather than renting it from the cable operator; and


(ii) to specify the types of remote control units that are compatible with the converter box supplied by the cable operator; and

(F) to prohibit a cable operator from taking any action that prevents or in any way disables the converter box supplied by the cable operator from operating compatibly with commercially available remote control units.

(d) Review of regulations. The Commission shall periodically review and, if necessary, modify the regulations issued pursuant to this section in light of any actions taken in response to such regulations and to reflect improvements and changes in cable systems, television receivers, video cassette recorders, and similar technology.

## CERTIFICATE OF SERVICE

I, Gregory B. McClinton, do hereby certify on this 28th day of May, 1996, that I have served a copy of the foregoing document via first class mail, postage prepaid, to the parties below:

  
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